

HOW A TYPICAL CRIMINAL CASE IS PROSECUTED IN ALASKA

The Office of Victims' Rights receives many inquiries from victims about how a criminal case in Alaska is investigated by police and then prosecuted by the state's assistant district attorneys. The following outline is intended to answer many of such questions.

While this outline is useful as a general illustration of how a typical felony case is handled, the reader is advised that the facts of each case are unique so a particular case may result in police and prosecutors dealing with it in a different fashion (from a procedural standpoint) than the "typical" case. In Alaska, crime victims have many rights that come into play at various stages of any criminal investigation or prosecution. For an explanation of those rights, the reader should look at "Listing of Your Rights" in this web site. If you would like clarification or more information, contact the Office of Victims' Rights.

1. **A Crime Is Committed** - All crimes in Alaska are either felonies or misdemeanor offenses. Generally speaking, what distinguishes between the two is the possible punishment upon conviction. If a crime is punishable by possible imprisonment for a period greater than one year it is classified as a felony. There are four categories of felony crimes in Alaska: Unclassified and Class A, B, and C felonies. The Unclassified felony is the most serious and provides for the greatest sentence while the Class C felony is the least serious. Some examples of felony crimes are murder, manslaughter, burglary, robbery, sexual assault and abuse, serious weapons offenses, kidnapping and aggravated assaults and thefts to name a few. If the crime carries a possible sentence of less than a year it is called a misdemeanor. There are two levels of misdemeanor offenses: Class A and Class B misdemeanors. Examples of misdemeanor crimes are thefts involving value of under \$500, assaults which do not involve the use of weapons or serious physical injury, minor weapons offenses, and driving while intoxicated to name a few. Most crimes also provide for the imposition of a fine in addition to incarceration.
2. **Investigation By Police** – Many crimes go undetected by the victim, or if detected go unreported to police. When a crime is reported to the authorities it will be investigated by municipal police or the Alaska state troopers, depending on where within the state the crime took place and other factors. The purpose of any police investigation is to identify the person who committed the offense and to gather evidence of the crime for later use at trial.

3. **Arrest Of Suspect** - When a peace officer determines based upon an investigation that probable cause exists to believe a crime has occurred and that a particular suspect is responsible, the officer is authorized by law to arrest that person, either with or without an arrest warrant depending on a number of factors. An arrest warrant is an order signed by a judge that commands a peace officer to take a suspect into custody for having committed a crime. Prior to issuing an arrest warrant the judge will consider the evidence gathered by the investigating officer in order to decide whether a crime has occurred and whether there is probable cause to believe the suspect committed the crime. Once a person has been arrested and charged with a crime that person is called a defendant rather than a suspect. Throughout the prosecution the lawyer representing the government is called the prosecutor. The lawyer for the person accused of the crime is called the defense attorney. Frequently, police officers consult with prosecutors during an investigation for the purpose of obtaining legal advice about how to make their case against a suspect “stronger” or more convincing to a jury that may be asked to decide whether the suspect is guilty or innocent.
4. **Initial Arraignment** – Within twenty-four hours following the defendant’s arrest the defendant must be taken before a judge for an initial arraignment. Generally speaking, the purpose of the initial arraignment is to
 - a. inform the defendant of the pending charges and to provide a copy of any charging documents filed by the prosecutor;
 - b. inform the defendant of his right to retain counsel and of the right to have an attorney appointed to represent him without cost if he can’t afford to hire one;
 - c. consider whether to release the defendant on bail pending further proceedings in the case.
5. **Bail** – A judge has the authority to release a defendant from custody on bail. Bail is money or a bond posted with the clerk of the court by the defendant or a bail bondsman on the defendant’s behalf in order to ensure that a defendant who has been released prior to trial will appear for the trial. If a bail bondsman posts the bail, he will charge the defendant a premium, usually 10% of the amount of the bond, and will require the balance to be secured by the defendant who may be asked to assign or pledge property to the bail bondsman. If the defendant fails to appear for court, or violates conditions of release imposed by a judge as a condition of getting out of jail, the bail or bond that has been posted may be forfeited to the court. This is done to penalize the defendant as well as to compensate the state for the added expense of searching for and re-arresting the fugitive defendant. A judge may consider a request to

reduce a defendant's bail at the initial arraignment or at a bail hearing scheduled at a later time. Instead of requiring a defendant to post money or a bond, a judge may release a defendant on his promise to appear for subsequent proceedings imposing whatever conditions of release the judge feels will assure that a victim and society are protected and that the defendant stays out of trouble while the charges work their way through the court. Victims have certain rights to have their concerns made known to a judge at a bail hearing and to have those rights taken into account by the judge in setting bail. See "Listing of Your Rights."

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6. **Grand Jury** – In Alaska, the grand jury is an independent investigative and accusatory body consisting of 18 citizens who are selected at random from voting, hunting, fishing, PFD and similar rosters. They generally serve for a period of 90 days. Their function is to act as a filter between the government and the people who are governed in order to decide whether sufficient credible evidence exists to require a person to stand trial on a felony charge. If a person is charged with a misdemeanor instead of a felony, their case will not be presented to a grand jury. Instead, a prosecutor files a "Complaint" or "Information" which alleges the crime. Since the issue before the grand jury is not the final question regarding the guilt or innocence of the accused, but simply the *probability* of guilt, the standard of proof which must be sustained by the prosecutor is considerably less than that required to convict by the trial jury. In short, an indictment may be found only upon the concurrence of a majority of the grand jurors who agree that, if all the evidence they hear is taken together, and if that evidence is unexplained or uncontradicted, a trial jury would convict the defendant. If they so decide, they return what's called a "true bill" of indictment. If a majority fail to reach an agreement on that issue, or decide that the evidence presented would not warrant a conviction of the accused at trial, they are required by law to return a "not true" bill whereupon the charges against the defendant are permanently dismissed and if in custody he is released.
7. **Arraignment** – The purpose of the post indictment arraignment is essentially the same as the initial arraignment that occurs shortly after the charges are filed but with some important differences. At this stage the judge will inform the defendant of the grand jury's decision and will call upon the defendant to enter a plea. Most defendants will enter a "not guilty" plea, which in turn will give rise to the need to have a trial.
8. **Pretrial Proceedings** – The law in Alaska generally requires that anyone charged with a crime has the right to have his or her case tried before a jury

within four months from the date of arrest or charging. However, in practice this seldom occurs due to proceedings which take place prior to the time the trial is scheduled to commence or because the defendant asks the court to postpone the trial. It is during this pre-trial stage that defense attorneys often file motions with the court to dismiss their clients' case for various reasons, to suppress evidence from consideration by the trial jury and similar motions. Any period of delay attributable to the defense while the prosecutor responds to such motions, and while the judge considers them, is added to the four months.

9. **Trial** - Trials are presided over by the trial judge who makes rulings from the bench regarding legal issues raised by the lawyers. A jury decides questions of fact-that is, what actually occurred in the case. They reach their decision regarding guilt or innocence by listening to witness and examining physical evidence subpoenaed before them by the lawyers. Frequently, a person is charged with multiple counts in a single indictment. Each count refers to the commission of a separate alleged crime by the defendant during one connected course of conduct so a jury is required to return a verdict for each count. The trial jury must unanimously agree about a defendant's guilt or innocence beyond a reasonable doubt for each count. A jury may convict on all counts or just on some of the counts and acquit on others all depending upon how they view the evidence and decide the case. A "reasonable doubt" is generally defined as a fair doubt, based upon the jurors' reason and common sense in light of their own collective personal life experiences. A person charged with a felony is entitled to a twelve-person jury whereas a jury considering a misdemeanor charge consists of six persons. If the defendant and state agree, a judge may decide guilt or innocence without a jury although this is done rarely. Most defendants are convicted as a result of plea discussions between the defense attorney and the prosecutor. When a plea agreement (also known as a plea bargain) is reached, there is no need to have a trial since the defendant acknowledges his guilt by his plea without the need for the trial. Crime victims in Alaska have a number of important rights in this area including the right to be consulted by the prosecutor regarding proposed plea agreements. See "Listing of Your Rights."

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10. **Sentencing** – In most felony cases, if a trial jury votes unanimously to convict a defendant the trial judge will order the Alaska Department of Corrections to prepare a pre-sentencing report and will schedule a sentencing hearing. In a misdemeanor case, sentence is usually imposed shortly after the jury renders the verdict. If the jury unanimously votes to acquit the defendant, the case is over and the defendant is discharged. In the event all jurors are

unable to render a unanimous verdict, the trial judge may declare a mistrial and the state has the right to retry the case to another jury. Unlike some other states, in Alaska the judge, not the jury, imposes sentence on a convicted defendant. The length and terms of a sentence are determined by law. The sentencing judge is required to consider a number of factors in fashioning a sentence. Some of those factors are: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender and the principle of reformation. Crime victims in Alaska have a number of important rights at sentencing. See “Listing of Your Rights.”

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11. **Appeals** – Any defendant found guilty by a jury has a right to have their conviction, and the way their case was handled by the trial judge, reviewed by an appellate court. If the appeals court finds that a significant legal error occurred, it may remand the case for additional proceedings or possibly a new trial. In the event a defendant decides to enter a plea of guilty or no contest instead of requiring the prosecutor to convince a trial jury of his guilt, the defendant gives up many of his rights on appeal.